IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 228 of 2001

in

SPECIAL CIVIL APPLICATIONNo 862 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABUBHAI C ZAVERI

Versus

DISTRICT HEALTH OFFICER

Appearance:

1. LETTERS PATENT APPEAL No. 228 of 2001

MR SP HASURKAR for Appellant No.

RULE SERVED for Respondent No. 1-3

MR SUNIL C PATEL for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 07/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant - petitioner had filed special civil application no. 862 of 1997 before this court and prayed that a writ of mandamus be issued to the respondents directing them to take expeditious action of sanctioning the retiremental benefits and other pensionary benefits of the petitioner and to give it to him within a stipulated time @ 18% p.a. from 03.02.1978 by quashing and setting the impugned order dated 10.06.1996. The learned single Judge of this court (Coram : S.K.Keshote,J) partly accepted special civil application no. 862 of 1997 by judgment and order dated 24.07.1999 and declared that the petitioner be treated to have been voluntarily retired from service with effect from 16.11.1978. Qualifying service of the petitioner for determination of his pension and other retirement benefits were to be considered for the period from 20.03.1953 to 16.11.1978, however, he was not given any actual benefit for the period from 01.10.1976 to 16.11.1978. Accordingly, the respondents were directed to sanction his pension and pay to him after determining the same so as the amount of gratuity and all other retiremental benefits within a period of three months from the date of the order. The arrears of pension, amount of gratuity, computation of pension and other benefits were to be given to the petitioner within one month next. Out of the said amount, the respondent no. 4 was permitted to deduct three months notice salary i.e. notice pay of voluntary retirement to be paid to the petitioner. However, though the prayer for interest 18% was made in the petition in para 7(c), it seems that at the time of hearing of the main writ petition, the same was not pressed before the learned single Judge and perhaps because of that, no such order was passed by the learned single Judge regarding interest to be paid to the petitioner.

#. It seems that it appears from the record that the appellant initially allowed the period of limitation to expire in filing this letters patent appeal and actually filed it on 10.01.2000 though the period of limitation was only 30 days. It appears from the reply affidavit of Shri Mishra DDO filed in this appeal that due to administrative reasons, there was a delay in complying with the order passed by the learned single Judge and everything was sanctioned and approved on 19.04.2000 and

accordingly the appellant - petitioner was paid his dues and also pensionary benefits. It seems that thereafter, civil application no. 11885 of 2000 was filed only on 16.06.2000 for condoning the delay in filing this appeal and the delay was condoned by the Division Bench of this court on 23.03.2001. Thereafter, this appeal was moved for admission and on 16.04.2001 initially Division Bench of this Court ordered to issue notice and thereafter it was admitted on 18.07.2001. It is clear from the order of notice dated 16.04.2001 that notice was ordered to be issued only on the question of interest on delayed payment of pensionary benefits. Thus, we are required to decide this appeal only on the point of interest to be paid to the appellant on the delayed payment of pensionary benefits.

#. Having heard learned counsel Shri Raval for Shri Hasurkar for the appellant and having gone carefully through the judgment and order dated 24.07.1999 passed by S.K.Keshote, J partly allowed writ petition filed by the appellant - petitioner, it is clear that at the time of the main writ petition no such argument was advanced on behalf of the appellant - petitioner before the learned single Judge to pay the interest on delayed pensionary benefits though the prayer was made to award interest 18% on delayed pensionary benefits. That apart, we find from the order of the learned single Judge that no where the learned single Judge found fault with the respondents in extending pensionary benefits late to the appellant petitioner. In that view of the matter, there is no question of entertaining this appeal.

It may be stated that appeal lies against the order passed by the learned single Judge under Clause 15 of the letters patent appeal and in the instant case, no such order was passed by the learned single Judge denying interest on the delayed payment of pensionary benefits as no prayer was made before His Lordship at the time of hearing of the writ petition. In that view of the matter, we are afraid that we cannot entertain this appeal on this ground also.

#. In view of the above discussion, this appeal is wholly misconceived and accordingly it is dismissed. Rule is discharged. No costs.

(B.J.SHETHNA, J)

(SHARAD D DAVE, J)

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